

Before the
UNITED STATES COPYRIGHT ROYALTY JUDGES
LIBRARY OF CONGRESS
Washington, DC

In re

DETERMINATION OF ROYALTY RATES AND TERMS
FOR PERFORMANCE OR DISPLAY OF
NONDRAMATIC MUSICAL WORKS AND PICTORIAL,
GRAPHIC, AND SCULPTURAL WORKS BY PUBLIC
BROADCASTING ENTITIES (PB IV)

Docket No. 21-CRB-0002-
PBR (2023-2027)

JOINT PROPOSAL OF AMERICAN SOCIETY OF COMPOSERS, AUTHORS AND
PUBLISHERS, BROADCAST MUSIC INC., SESAC PERFORMING RIGHTS, LLC
AND GLOBAL MUSIC RIGHTS

The American Society of Composers, Authors, and Publishers (“ASCAP”), Broadcast Music, Inc. (“BMI”), SESAC Performing Rights, LLC (“SESAC”) and Global Music Rights, LLC (“GMR”) (collectively, the “Performing Rights Organizations” or “PROs”) submit this joint proposal for statutory license fees to be paid to each of the PROs, respectively, by noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with National Public Radio, Inc. (the “College Radio Stations”) for the performance of copyrighted musical works in each respective PRO’s repertory for the years 2023 through 2027.¹

¹ Each PRO had previously proposed separate unitary proposals for statutory license fees to be paid by noncommercial educational radio broadcast stations licensed to colleges or universities that are not affiliated with NPR with amended language to 37 C.F.R. § 351.5. In response to the Order 6 Regarding Proposals issued by the Copyright Royalty Judges (“CRJs”) in this proceeding, the PROs submit this joint proposal aggregating each PRO’s separate proposed license fees, which should be considered in place of the separate unitary proposals

On January 5, 2021, the Copyright Royalty Judges (“Judges”) published a notice in the above-captioned proceeding to set rates for the five-year term from January 1, 2023 through December 31, 2027. *See* 86 Fed. Reg. 325. Each PRO timely filed a petition to participate in the proceeding. However, unlike past Section 118 proceedings, no entity or representative of the College Radio Stations submitted a petition to participate in the Proceeding. The fact that no such entity is participating in this proceeding on behalf of the College Radio Stations presented an unprecedented situation. In every prior Section 118 rate-setting proceeding, the PROs participating in such proceeding had available an association representing the College Radio Stations appear and participate in the proceeding and enter into settlement negotiations with the PROs. Those parties – the American Council on Education (“ACE”) and the National Association of College and University Business Officers (“NACUBO”) – were able to agree upon rates and terms with each of the participating PROs and jointly filed with such PROs proposed rates and terms. In each instance, the joint proposals were adopted and promulgated as regulations. *See, e.g.*, 72 Fed. Reg. 67646 (Nov. 30 2007) (2008-2012 rates); 77 Fed. Reg. 71105 (Nov. 29, 2012) (2013-2017 rates) and 83 Fed. Reg. 2739 (Jan. 19 2018) (2018-2022 rates).

The Judges adopted our joint proposals in past proceedings on the basis of its authority set out in 17 U.S.C. §801. Section 801(1) provides the broad authority for the Judges to set rates and terms under Section 118 (the authority to “make determinations and adjustments of reasonable terms and rates of royalty payments as provided in sections * * * 118”). Additionally, Section 801(7)(A) provides the Judges the authority to adopt as a basis for statutory terms and rates “an agreement concerning such matters reached among some or all of the participants.” Under either

basis, the Judges have the statutory to adopt the rates and terms proposed by the PROs herein for the College Radio Stations.

First, under its broad Section 801(1) authority, the Judges may adopt a proposal by any participant in a proceeding. While we are unaware that the Judges ever based their adoption of proposed Section 118 rates and terms upon its broad Section 801(1) authority, clearly such a basis is warranted in a novel situation, such as here, where there is no participating broadcaster with which a copyright owner may negotiate an agreement. Indeed, in an extreme situation where only a single copyright owner party (and no broadcaster party) filed a petition to participate and settlement among “some or all of the participants” is impossible (as only a single participant would have appeared), it would be nonsensical to deny a basis for the Judges to adopt the unitary proposal.

Nevertheless, here, the Judges have the basis to adopt this joint proposal pursuant to its Section 801(7)(A) authority, as this proposal being filed herein has been reached among “*some* or all of the participants.” Nothing in Section 801(7)(A) requires that the agreement be reached among at least one copyright owner and at least one participant that would be bound by the rates and terms, rather it be reached among “*some* or all” of the participants. The PROs are “*some* or all” of the participants. The fact that this proposal is not being proposed jointly with College Radio Stations would not jeopardize their interests given that Section 801(7)(A) requires the Judges to “provide to those that would be bound by the terms, rates, or other determination set by any agreement in a proceeding to determine royalty rates an opportunity to comment on the agreement.” Moreover, as the PROs noted in our unitary proposals, NACUBO supported the proposals.²

² See, e.g., E-mail correspondence from Liz Clark, Vice President, Policy and Research, NACUBO, to Janet Fries, counsel for BMI, dated May 7, 2021. This correspondence copied Bryan Dickson, Director, Student Financial

Accordingly, attached as Appendix A is a proposed 37 C.F.R. § 351.5 and 37 C.F.R. § 381.10 setting forth rates and terms for fees to be paid by College Radio Stations pursuant to Section 118 of the Copyright Act for the 2023-2027. As in the past, the rates proposed reflect an increase not greater than an increase in inflation. It should be stressed that each PRO independently reached its own rate proposal, but no PRO objects to the rates proposed by each other PRO.

The PROs respectfully request that 37 C.F.R. § 381.5 and 37 C.F.R. § 381.10 be amended in accordance with Appendix A.

[SIGNATURES FOLLOW]

Services and Educational Programs, NACUBO; and Peter McDonough, Vice President and General Counsel, ACE. See also, E-mail dated June 10, 2021 from Bryan Dickson, NACUBO Director, Student Financial Services and Educational Programs to Sam Mosenkis. (“NACUBO holds a position that royalty rate escalations limited to an annual consumer price index-based adjustment is a reasonable approach to updating 37 C.F.R. §381.5.”)

Respectfully submitted,

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APPENDIX A

§ 381.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

(a) ***Scope.*** This section applies to the performance of copyrighted published nondramatic musical compositions by noncommercial radio stations which are licensed to accredited colleges, accredited universities, or other accredited nonprofit educational institutions and which are not affiliated with National Public Radio. For purposes of this section, accreditation of institutions providing post-secondary education shall be determined by a regional or national accrediting agency recognized by the Council for Higher Education Accreditation or the United States Department of Education; and accreditation of institutions providing elementary or secondary education shall be as recognized by the applicable state licensing authority.

(b) ***Voluntary license agreements.*** Notwithstanding the schedule of rates and terms established in this section, the rates and terms of any license agreements entered into by copyright owners and colleges, universities, and other nonprofit educational institutions concerning the performance of copyrighted musical compositions, including performances by noncommercial radio stations, shall apply in lieu of the rates and terms of this section.

(c) ***Royalty rate.*** A public broadcasting entity within the scope of this section may perform published nondramatic musical compositions subject to the following schedule of royalty rates:

(1) For all such compositions in the repertory of ASCAP, the royalty rates shall be as follows:

(i) ***Music fees.***

	Number of full-time students	2023	2024	2025	2026	2027
Level 1	<1,000	\$390	\$400	\$410	\$421	\$432
Level 2	1,000-4,999	\$451	\$463	\$475	\$487	\$500
Level 3	5,000-9,999	\$619	\$635	\$652	\$669	\$686
Level 4	10,000-19,999	\$801	\$822	\$843	\$865	\$887
Level 5	20,000+	\$1,009	\$1,035	\$1,062	\$1,090	\$1,118

(ii) Level 1 rates as set forth in paragraph (c)(2)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a) of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(2) For all such compositions in the repertory of BMI, the royalty rates shall be as follows:

(i) ***Music fees.***

	Number of full-time students	2023	2024	2025	2026	2027
Level 1	<1,000	\$390	\$400	\$410	\$421	\$432
Level 2	1,000-4,999	\$451	\$463	\$475	\$487	\$500
Level 3	5,000-9,999	\$619	\$635	\$652	\$669	\$686
Level 4	10,000-19,999	\$801	\$822	\$843	\$865	\$887
Level 5	20,000+	\$1,009	\$1,035	\$1,062	\$1,090	\$1,118

(ii) Level 1 rates, as set forth in paragraph (c)(2)(i) of this section, shall also apply to College Radio Stations with an authorized effective radiated power (ERP), as that term is defined in 47 CFR 73.310(a) of 100 Watts or less, as specified on its current FCC license, regardless of the size of the student population.

(3) For all such compositions in the repertory of SESAC, the royalty rates shall be as follows:

(i) 2023: The 2022 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(ii) 2024: The 2023 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(iii) 2025: The 2024 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(iv) 2026: The 2025 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(v) 2027: The 2026 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(4) For all such compositions in the repertory of GMR, the royalty rates shall be as follows:

(i) 2023: \$174.00 per station, subject to an annual cost of living adjustment in accordance with § 381.10.

(ii) 2024: The 2023 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(iii) 2025: The 2024 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(iv) 2026: The 2025 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(v) 2027: The 2026 rate, subject to an annual cost of living adjustment in accordance with § 381.10.

(vi) For stations broadcasting primarily in a religious format (including, without limitation, Contemporary Christian music, praise and worship, Gospel, Southern Gospel, Spanish religious music, inspirational, religious, etc.), at their option for 2023-2027, either the rates set forth in this subsection (c)(4) or the rates set forth in 37 C.F.R. [381.6(d)(4).]

(5) For the performance of any other such compositions: \$1.

(d) **Payment of royalty rate.** The public broadcasting entity shall pay the required royalty rate to ASCAP, BMI, SESAC and GMR not later than January 31 of each year. Each annual payment to ASCAP, BMI, SESAC and GMR shall be accompanied by a signed declaration stating the number of full-time students enrolled in the educational entity operating the station and/or the effective radiated power (ERP) as specified in its current FCC license. An exact copy of such declaration shall be furnished to each of ASCAP, BMI, SESAC and GMR.

(e) **Records of use.** A public broadcasting entity subject to this section shall furnish to ASCAP, BMI, SESAC and GMR, upon request, a music-use report during one week of each calendar year. ASCAP, BMI, SESAC and GMR shall not in any one calendar year request more than 10 stations to furnish such reports.

§ 381.10 Cost of living adjustment.

(a) On or before December 1, 2023, the Copyright Royalty Judges shall publish in the Federal Register a notice of the change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 2022, to the most recent Index published prior to December 1, 2023. On or before

each December 1 thereafter the Copyright Royalty Judges shall publish a notice of the change in the cost of living during the period from the most recent index published prior to the previous notice, to the most recent Index published prior to December 1, of that year.

(b) On the same date of the notices published pursuant to paragraph (a) of this section, the Copyright Royalty Judges shall publish in the Federal Register a revised schedule of the rates for §§ 381.5(c)(3) and (c)(4), the rate to be charged for compositions in the repertories of SESAC and GMR, which shall adjust the royalty amounts established in a dollar amount according to the greater of:

(1) The change in the cost of living determined as provided in paragraph (a) of this section; or

(2) One-and-a-half percent (1.5%).

(3) Such royalty rates shall be fixed at the nearest dollar.

(c) The adjusted schedule for the rates for §§ 381.5(c)(3) and (c)(4) shall become effective thirty (30) days after publication in the Federal Register.

Proof of Delivery

I hereby certify that on Wednesday, December 07, 2022, I provided a true and correct copy of the Joint Proposal of ASCAP BMI GMR and SESAC to the following:

Church Music Publishers' Association, Inc., represented by Carroll C Rigler, served via E-Service at cheshirerigler@shrumhicks.com

Educational Media Foundation, represented by David Oxenford, served via E-Service at doxenford@wbklaw.com

Powell, David, represented by David Powell, served via E-Service at davidpowell008@yahoo.com

American Society of Composers, Authors and Publishers, represented by Sam Mosenkis, served via E-Service at smosenkis@ascap.com

Public Broadcasting Entities, represented by David P Mattern, served via E-Service at dmattern@kslaw.com

SESAC Performing Rights, LLC, represented by Timothy L Warnock, served via E-Service at twarnock@loeb.com

Global Music Rights, LLC, represented by Scott A Zebrak, served via E-Service at scott@oandzlaw.com

National Religious Broadcasters Noncommercial Music License Committee, represented by Karyn K Ablin, served via E-Service at ablin@fhhlaw.com

The Harry Fox Agency LLC, represented by Stephen Block, served via Email

Signed: /s/ Janet Fries